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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/362,631	07/21/1999	RONALD J. MOSSO	N19.12-0020	7098

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EXAMINER

MAYEKAR, KISHOR

ART UNIT PAPER NUMBER

1753

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/362,631

Applicant(s)

MOSSO ET AL.

Examiner

Kishor Mayekar

Art Unit

1753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-27 and 57-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-27 and 57-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 4, 2003 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 22 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 22, the phrase "that delivers" and "having a flow ... gas" are indefinite for the reference to a method of operating the device.

In claim 26, the same is applied to claim 22.

Claim Rejections - 35 USC § 102 and § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 20, 21, 24, 54, 63 and 64 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by AXELBAUM et al. (5,498,446), a reference cited in the last Office action. The reference's invention is directed to an apparatus for producing high purity and unagglomerated submicron particles. The reference discloses in the abstract and Figs.1 and 3 that the apparatus comprises a plurality of reactant inlets configured to direct a plurality of independent reactant streams

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configured to form independent product streams toward one product outlet; and a particle collection apparatus as claimed (emphasis added).

6. Claims 20-22, 54, 55, 63 and 64 are rejected under 102(b) as being clearly anticipated by JP 61-67836, a reference cited by Applicant with a translation. The Japanese reference's invention is directed to a fine powder manufacturing apparatus using a laser. The reference discloses in Fig. 1 that the apparatus comprises a plurality of reactant inlets configured to direct a plurality of independent reactant streams configured to form independent product streams towards a plurality of product outlets; and a particle collection apparatus as claimed. The reference further discloses in page of the translation that the apparatus can produce particles of different particle sizes and different compositions with a single apparatus in addition to same particle size and same composition.

7. Claims 23, 25-27, 52, 53, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP "836. The difference between the Japanese reference

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as applied above and the instant claims are each of the limitations recited in the instant claims.

As to the subject matter of claim 23, the provision of a plurality of reaction chambers, the subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reference's teachings because the motivation to make elements separable was held to have been obvious, *In re Dulberg* 129 USPQ 148.

As to the subject matter of claims 58 and 59, "changes of size, degree, shape proportion, and sequence of adding ingredients" have been held to be obvious, *In re Rose* 105 USPQ 237; *In re Aller* 105 USPQ 233; *In re Dailey* 149 USPQ 47; *In re Reese* 129 USPQ 402; *In re Gibson* 5 USPQ 230.

8. Claims 24, 56, 57 and 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '836 as applied to claims 23, 25-27, 52, 53, 58 and 59 above, and further in view of BEATY et al. (5,194,128), another reference cited in previous Office action. The difference between the reference as applied above and the instant claims is the provision of the recited manifold. BEATY shows the sequential deposition of manufactured particles from individual sources or

combinations of particles prior to collection (col. 6, lines 49-66 and Fig. 5). The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reference's teachings as suggested by BEATY because the motivation to make a specific structure is always related to the properties or uses one skilled in the art would expect the structure to have, *In re Newell* 13 USPQ 2d 1248, *Fromson v. Advance Offset Plate* 225 USPQ 26; *In re Gyurik* 201 USPQ 552. And further because this would result in collecting manufactured particles from different individual outlet sources.

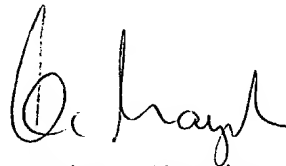
Response to Arguments

9. Applicant's arguments filed November 4, 2003 have been fully considered but they are not persuasive of the rejections as set forth in the above paragraphs.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kishor Mayekar whose telephone number is (571) 272-1339. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen can be reached on (571) 272-1342.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kishor Mayekar
Primary Examiner
Art Unit 1753

KM